

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

LARRY EUGENE YARBROUGH,)	
)	
Petitioner,)	
)	
v.)	No. CIV-01-1421-L
)	
CHARLES RAY, Warden, et al.,)	
)	
Respondents.)	

ORDER

On February 20, 1997, petitioner, who had been convicted in Oklahoma state court of trafficking in narcotics after former conviction of two or more felonies, was sentenced to life imprisonment without the possibility of parole. His conviction and sentence were affirmed by the Oklahoma Court of Criminal Appeals on August 28, 1998. On September 10, 2001, petitioner filed a petition for writ of habeas corpus attacking this conviction. Thereafter, the court issued an Order dismissing the petition as time-barred. Petitioner appealed to the Court of Appeals for the Tenth Circuit, which affirmed the dismissal on December 9, 2002.

This matter is before the court on petitioner's Motion for Relief from Judgment pursuant to Rules 60(b)(2) and 60(b)(6) of the Federal Rules of Civil Procedure. Petitioner's Rule 60(b) motion is considered a second habeas petition for purposes of the Antiterrorism and Effective Death Penalty Act ("AEDPA"). See Lopez v.

Douglas, 141 F.3d 974, 975 (10th Cir.), *cert. denied*, 525 U.S. 556 (1998). Pursuant to the AEDPA, authorization must be obtained from the Court of Appeals for the Tenth Circuit before a petitioner may file a second or successive motion pursuant to 28 U.S.C. § 2254. See 28 U.S.C. § 2244(b)(3)(A). When a second or successive motion for relief pursuant to 28 U.S.C. § 2254 is filed in this court, the Court of Appeals for the Tenth Circuit has held that the motion should be transferred to it pursuant to 28 U.S.C. § 1631. Coleman v. United States, 106 F.3d 339, 341 (10th Cir. 1997). The Clerk of Court is therefore directed to transfer the following motions to the Court of Appeals for the Tenth Circuit for consideration pursuant to 28 U.S.C. § 2244(b)(3)(A): (1) petitioner's Motion for Relief from Judgment (Doc. No. 30); (2) petitioner's Motion for Order Granting Motion for Relief from Judgment (Doc. No. 31); and (3) petitioner's Motion for Evidentiary Hearing (Doc. No. 32).

It is so ordered this 11th day of October, 2005.


TIM LEONARD
United States District Judge